

Message Text

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ORIGIN L-02

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DRAFTED BY L/EUR:DHSMALL:NMC

APPROVED BY EUR:RDVINE

C - MR. DOBBINS

S/S - JMEALUM

EUR/CE - MR. DAVIS

EUR/RPM - MR. DAVISON

L/EUR - MR. RUSSELL

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TO USDEL SECRETARY IMMEDIATE

C O N F I D E N T I A L STATE 126722 TOSEC 020162

E.O. 11652: GDS

TAGS: CSCE, PFOR, WB, XG

SUBJECT: CSCE: QUADRIpartite RIGHTS AND RESPONSIBILITIES

REF: (A) SECTO 2054

(B TOSEC 20117

C) BONN 8710

FOR HARTMAN AND SONNENFELDT

1. FOLLOWING IS REVISED SUGGESTED GUIDANCE REQUESTED REF A.
SINCE TEXT PREVIOUSLY REPORTED IS CURRENTLY IN PLAY WITH
YUGOSLAVS, WE HAVE RETAINED ORIGINAL PROPOSED GUIDANCE FOR
BENEFIT USDEL CSCE AND SUPPLEMENTED IT WITH SUGGESTED
GUIDANCE ON NEW FRENCH VERSION. L AND EUR RECOMMEND YOU
APPROVE THIS GUIDANCE BY IMMEDIATE CABLE TO GENEVA, INFO
BONN.

2. BEGIN TEXT. REFS (A) SECTO 2040 (B) GENEVA 3996,
(C) GENEVA 4006, (D) SECTO 2054; (E) BONN 8710.

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1. WE ARE PERPLEXED AND CONCERNED BY FRENCH ACTIONS ON QRR TEXT (REFS A AND B), PARTICULARLY THEIR SUGGESTION TO YUGOSLAVS OF TEXT DISCUSSED BY ALLIES ON SEVERAL OCCASIONS IN GENEVA, ELEMENTS OF WHICH U.S., U.K. AND F.R.G. HAVE MORE THAN ONCE CLEARLY REJECTED. FRENCH MAY WELL HAVE COMPLICATED THE NEGOTIATIONS CONSIDERABLY BY GIVING YUGOSLAVS IMPRESSION THAT TEXT HAD POSITIVE PROSPECTS AMONG

WESTERN ALLIES. LATEST FRENCH VERSION, (REF D), WHILE MITIGATING SOMEWHAT PROBLEM OF "ORIGINAL" VERSUS "CONTRACTUAL" RIGHTS, HAS ITS OWN PROBLEMS AND DOES NOT SEEM PROMISING ROUTE TO FOLLOW.

2. PRIMARY DIFFICULTY WITH VERSION GIVEN YUGOSLAVS REMAINS THAT QRR'S ARE NOT ALL "SPECIFICALLY DEFINED" (E.G., GROUND ACCESS ARRANGEMENTS, RIGHT OF FREE CIRCULATION IN ALL OF BERLIN) AND WHILE CASE COULD BE MADE THAT THERE HAS BEEN "RECOGNITION" OF QRR'S (E.G., IN ARTICLE 107 OF THE CHARTER AND IN QUADRIPARTITE DECLARATION REGARDING UN ENTRY), THIS IS ALSO ARGUABLE AND WOULD REPRESENT A NEW TEST TO WHICH WE DO NOT SEE NEED TO SUBJECT QRR'S FURTHER, REGARDING BREZHNEV DOCTRINE, SOVIETS COULD WELL ARGUE THAT THEIR RIGHTS TO INTERVENE HAVE BEEN SPECIFICALLY DEFINED AND RECOGNIZED IN THEIR TREATIES WITH OTHER SOCIALIST STATES.

3. REQUIREMENT OF SPECIFIC DEFINITION AND RECOGNITION OF QRR'S WOULD SUPPORT SOVIET THEORY THAT WESTERN ALLIES ONLY HAVE THOSE RIGHTS OBLIGATIONS AND RESPONSIBILITIES REGARDING BERLIN WHICH HAVE BEEN SET OUT IN AGREED DOCUMENTS AND THEREFORE THAT ALLIES HAVE NO "ORIGINAL" RIGHTS IN BERLIN, ONLY RIGHTS THAT THEY HAVE BEEN GRANTED BY USSR IN AGREEMENTS. THIS CARRIES WITH IT, IN SOVIET THEORY, CONSEQUENCE THAT WHAT WE HAVE IS REVOCABLE BY THEM IN CONSEQUENCE OF OUR VIOLATIONS, OR CAN BE LOST BY US IF THE AGREEMENTS BECOME INVALID FOR OTHER REASONS, E.G., FUNDAMENTAL CHANGES IN CIRCUMSTANCES. WE AGREE WITH FRG (REF C) THAT, PARTICULARLY IN VIEW OF RECENT SOVIET NOTE IN THE UN, CHALLENGING "ORIGINAL" ALLIED RIGHTS, IT WOULD BE MISTAKE TO ADOPT TEXT SO CLOSELY

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ADAPTED TO SOVIET THEORY.

4. NEW FRENCH VERSION (REF D) WOULD DESCRIBE THREE CATEGORIES: (1) RIGHTS, (2) OBLIGATIONS AND (3) SPECIFICALLY DEFINED AND RECOGNIZED RESPONSIBILITIES. THIS IS AN INNOVATION IN QRR TERMINOLOGY AND FROM POINT OF VIEW OF OUR BERLIN INTERESTS; AN UNDESIRABLE ONE. FIRST, IT WOULD INTRODUCE LANGUAGE IN THIS SENSITIVE AREA THE

MEANING AND IMPLICATIONS OF WHICH ARE UNCLEAR. (WE WOULD BE INTERESTED, IF FRENCH PERSIST IN THIS TACK, IN HAVING EXPLANATION FROM THEM OF, IN PARTICULAR, WHAT FALLS INTO CATEGORY (2) AND WHAT FALLS INTO CATEGORY (3).) SECOND, ALLIED RESPONSIBILITIES IN BERLIN ARE NOT ALL "SPECIFICALLY DEFINED AND RECOGNIZED" ANY MORE THAN ARE OUR RIGHTS AND OBLIGATIONS. FOR EXAMPLE, MOST SPECIFIC

DEFINITION OF WHAT MIGHT BE CONSIDERED "RESPONSIBILITIES" IS FOUND IN THE "POLITICAL PRINCIPLES" OF THE POTSDAM PROTOCOL, E.G., ELIMINATION OF NAZISM AND MILITARISM AND PREVENTION OF THEIR REVIVAL. FRG HAS STRENUOUS OBJECTIONS TO NOTION THAT POTSDAM PROTOCOL IMPOSES PRESENT DAY RESPONSIBILITIES RESPECTING ITSELF. RESPONSIBILITIES WHICH CONCERN US MORE TODAY, E.G., RESPONSIBILITY OF WESTERN ALLIES AS OCCUPIERS CUM GUARANTORS, TO PROVIDE FOR THE WELFARE (IN BROADEST POLITICAL SENSE) OF THE INHABITANTS OF THE WESTERN SECTORS, IS NOT ITSELF SPECIFICALLY DEFINED AND RECOGNIZED AND HAS ONLY PARTIAL DEFINITION AND RECOGNITION IN QA AND RELATED INNER-GERMAN AGREEMENTS, WHICH CANNOT BE VIEWED AS EXHAUSTIVE ON THESE MATTERS. THIRD, FRENCH TEXT WOULD SEEM TO LEND ITSELF TO A THEORY THAT THE ALLIES HAVE NO "RESPONSIBILITIES" FLOWING GENERALLY FROM THE DEFEAT OF GERMANY AND THE CREATION AND PERSISTENCE OF THE OCCUPATION, BUT RATHER ONLY THOSE WHICH THE AGREEMENTS WITH THE USSR GIVE US. FOURTH, REVISED FRENCH TEXT IS PARTICULARLY TROUBLING IN LIGHT OF ARTICLE 107 OF THE CHARTER, WHICH IS FUNDAMENTAL LEGAL PROTECTION FOR OUR POSITION IN BERLIN. ARTICLE 107 DOES NOT ADDRESS ITSELF EXPRESSLY TO RIGHTS AND OBLIGATIONS, BUT RATHER TO "ACTIONS TAKEN OR AUTHORIZED AS A RESULT (OF WORLD WAR II) BY THE GOVERNMENTS HAVING

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RESPONSIBILITY FOR SUCH ACTION." TO QUALIFY THIS KEY CONCEPT OF "RESPONSIBILITIES" WITH A PHRASE LIMITING ITS SCOPE TO AN UNCLEAR BUT SEEMINGLY SIGNIFICANT EXTENT, WOULD BE A LARGE PRICE TO PAY FOR CSCE AGREEMENT ON A SAVING CLAUSE.

5. THUS FRENCH, UK AND FRG SHOULD BE INFORMED ASAP THAT "SPECIFICALLY DEFINED AND RECOGNIZED" REMAINS UNACCEPTABLE TO U.S.. WHILE WE BELIEVE THAT FRENCH SHOULD HAVE TO WALK THE CAT BACK WITH THE YUGOSLAVS; U.S. DEL SHOULD ALSO INFORM YUGOSLAVS DIRECTLY OF OUR NEGATIVE REACTION TO THE TEXT, WHILE LEAVING SUGGESTION THAT POSSIBLE VARIATIONS WOULD HAVE MORE PROMISE. IT WOULD SEEM PRUDENT, IN LIGHT OF EVENTS, FOR U.S. DEL TO INCREASE DIRECT CONTACTS WITH NEUTRALS ON QRR IN GENERAL. WE

CONCUR IN USDEL SUGGESTION TO SUBSTITUTE "UNDER OR IN CONFORMITY WITH INTERNATIONAL LAW" FOR "SPECIFICALLY DEFINED AND RECOGNIZED" AND RECALL THAT SOVIETS AGREED TO THIS PHRASE ON MAY 13. (WE NOTE THAT THEY ALSO FOUND "SPECIFICALLY DEFINED AND RECOGNIZED" ACCEPTABLE ON THAT DATE.) WE ALSO CONCUR IN FALLBACK OF DELETING "RESPONSIBILITIES" AND THEREBY REMOVING SOURCE OF NEUTRAL'S DEMAND FOR A QUALIFIER. WE ARE PREPARED TO CONSIDER:

"RIGHTS, OBLIGATIONS, AND RESPONSIBILITIES RECOGNIZED UNDER THE U.N. CHARTER," IF OTHER BONN GROUP CSCE DELS FIND IT PROMISING, BUT DOUBT IF ROMANIANS WOULD SIT STILL FOR THIS. FRENCH SHOULD BE REMINDED OF THE IMPORTANCE WE ATTACH TO ALLIED COORDINATION OF QRR NEGOTIATIONS, BOTH REGARDING TACTICS AND TEXTS.
END TEXT INGERSOLL

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